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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: HARLINGEN, TEXAS

Date: AUG 24 2005

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the former  
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on August 22, 1966. The applicant's father [REDACTED] was born in Mexico on April 17, 1940. He derived U.S. citizenship at birth through a U.S. citizen parent. The applicant's mother, [REDACTED] was born in Mexico on July 21, 1937, and she is not a U.S. citizen. The applicant's parents married in Mexico on October 3, 1965. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401(g)), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director found that the applicant had failed to establish his father (Mr. [REDACTED]) was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after Mr. [REDACTED] reached the age of fourteen, as required by section 301(a)(7) of the former Act. The application was denied accordingly.

On appeal, the applicant asserts that he qualifies for U.S. citizenship through his father and that he will submit additional U.S. physical presence documents to further prove his citizenship claim. The AAO notes that no additional documents were received by the AAO.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on July 14, 1956. Section 301(a)(7) of the former Act is therefore applicable to his citizenship claim.

Section 301(a)(7) of the former Act states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

In the present matter, the applicant must establish that his father was physically present in the U.S. for ten years between April 17, 1940 and August 22, 1966, and that five of those years occurred after April 17, 1954, when Mr. [REDACTED] turned fourteen.

The evidence relating to Mr. [REDACTED] physical presence during the requisite time period consists of the following:

A U.S. Certificate of Citizenship issued to Mr. [REDACTED] on July 24, 1959, reflecting that Mr. [REDACTED] resided in Monterrey, Nuevo Leon, Mexico.

Social Security Earnings statements reflecting that Mr. [REDACTED] earned the following amounts in the U.S. between 1959 and 1962:

1959 - \$829.14  
1960 - \$1807.14  
1961 - \$1138.77  
1962 - \$377.52

A U.S. Selective Service Registration card dated March 8, 1963.

A Teamsters Union membership card stating that the Orange, California Local chapter initiated Mr. [REDACTED] on November 19, 1959.

A U.S. Immigration and Naturalization Service Identification Card reflecting that Mr. [REDACTED] resided in Los Angeles, California at the time of his registration on August 3. The year is illegible.

An affidavit dated December 28, 2000, signed by [REDACTED] stating that she is Mr. [REDACTED] paternal cousin, that Mr. [REDACTED] lived in the United States from 1955 to 1965, and that while he lived in Del Rio, Texas, she and he visited each other frequently.

An undated affidavit signed by [REDACTED] in Nueva Rosita, Mexico, stating that Mr. [REDACTED] is his grandnephew, and that [REDACTED] resided with his mother and grandmother in Mercedes, Texas from the time of his birth until approximately 1954. The affidavit states that Mr. [REDACTED] then lived in Mexico until 1953, when Mr. Jimenez returned to the U.S. to work and live.

The AAO finds that the affidavits submitted by the applicant lack probative value. The U.S. physical presence dates contained in the affidavits are contradictory. Moreover, the affidavits are unsupported by corroborative information or evidence, and they lack material detail regarding the affiant's source of knowledge and regarding the specific dates and locations of Mr. [REDACTED] physical presence in the United States. The AAO finds that the remaining evidence submitted by the applicant establishes that Mr. [REDACTED] was physically present in the U.S. for approximately four years between 1959 and 1963.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the U.S. for ten years prior to the applicant's birth, at least five years of which occurred after the applicant's father turned fourteen. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.